



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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December 4, 2000

Charles E. Findley, Acting Regional Administrator
U.S. Environmental Protection Agency, Region 10
1200 6th Avenue
Seattle, Washington 98101

Donna Darm, Acting Regional Director
National Marine Fisheries Service
7600 Sandpoint Way N.E.
Seattle, Washington 98115

Re: Nez Perce Tribe's Continued Opposition to Utilizing Endangered Species Act Processes for Clean Water Act Compliance

Dear Mr. Findley and Ms. Darm:

The Nez Perce Tribe appreciates the continued opportunity to share our concerns with you regarding the proposal to refer Clean Water Act violations and water quality issues in the Columbia and Snake River Basins to the Water Quality Team of the NMFS' Endangered Species Act Forum. This proposal anticipates creating a new team in NMFS' Endangered Species Act Forum that will have responsibilities for the "integration" of the Endangered Species Act and Clean Water Act in future decisions on the Columbia and Snake River Basins.

The Nez Perce Tribe strongly opposes this proposal. Referring Clean Water Act compliance and water quality issues to an Endangered Species Act forum is fatally flawed. As the United States District Court for the District of Oregon has held, the Clean Water Act is a separate and distinct legal obligation from the Endangered Species Act, and all parties, including the federal government, must comply with the Clean Water Act, regardless of any other independent statutory requirements. We urge the Environmental Protection Agency to continue to treat these legal obligations separately to ensure that all parties, including the United States, complies with the Clean Water Act.

NMFS' ESA Forum has proven so ineffective at administering the Endangered Species Act, let alone administering other legal obligations, that in May of 1997, the four Columbia River Treaty Tribes, including the Nez Perce Tribe, formally withdrew from this process. The Tribes' decision was based on the "inability of the NMFS' process to address the federal government's trust responsibility to the tribes, to protect treaty reserved resources, or to implement the tribal salmon restoration plan."

*May Lou - let's
discuss our response*
CF


The substance that is being considered in ESA processes, particularly NMFS' Draft Biological Opinion on the Federal Columbia River Power System, does not ensure compliance with the Clean Water Act. As the Nez Perce Tribe noted in its October 19, 2000 comments on the NMFS' Draft Biological Opinion and its "Water Quality Plan," this ESA document does not comply with the Clean Water Act. Moreover, the "Water Quality Plan" is not a plan to ensure that the United States complies with the water quality standards, but instead is a plan to develop a plan to "address" the "long term water quality goals" at some unspecified time in the future through some indeterminate means. "Integrating" multiple statutory mandates in this manner does not satisfy the United States' Clean Water Act obligations.

In its February 2000 Tribal Consultation Framework, EPA, Region 10 committed to conducting meaningful consultation with Tribes when "matter may directly affect the environment, resources, treaty rights or other legal rights" of the Tribe. The Tribe urges EPA to implement its commitment to addressing tribal Clean Water Act concerns on a government-to-government basis and not in an ESA Forum.

The Environmental Protection Agency and the National Marine Fisheries Service must act now to ensure that the United States and all parties comply with the Clean Water Act, regardless of other legal obligations the United States has under other federal laws such as the Endangered Species Act. We recognize that compliance with the Clean Water Act is not an easy task, but all agencies of the federal government have already identified measures and their costs that may be taken to ensure that the United States complies with the law. The Tribe continues to believe that the United States' water quality violations and the costs of remedying these violations must be fully disclosed so that decision-makers and the public will know the very real costs that failing to breach the four lower Snake River dams imposes.

We appreciate your careful consideration of our views.

Sincerely,


Samuel N. Penney
Chairman